IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11/02/2003

CORAM

The Hon'ble Mr.Justice M.KARPAGAVINAYAGAM.
AND
The Hon'ble Mr.Justice A.K.RAJAN.

Criminal Appeal No.917 of 1999

1.Madasamy.

2.Paramasivam.

3.Samuthiram.

4.Seeni. .. Appellants

-Vs-

State represented by
Inspector of Police,
Sivagiri,
Cr;No.182/97,
Nellai District. .. Respondent

This appeal filed under Section 374(2) of Cr.P.C. against the judgment passed by the I Additional Sessions Judge, Tirunelveli in S.C.No.4 68 of 1997 dated 28.10.1999

!For Appellant-1 :: Mr.R.S.Ramanathan.

^For Appellants 2 to 4 :: Mr.A.Vivek.

For Respondent -- Mr.E.Raja,
Addl. Public Prosecutor

:J U D G M E N T

(Judgment of the Court was delivered by M.KARPAGAVINAYAGAM,J.)
The appellants are the accused 1 to 4 in S.C.No.468 of 1997 on the file of the I Additional Sessions Judge, Tirunelveli. In and by a judgment dated 28-10-1999 in the aforesaid sessions case, accused 1 to 3 were convicted for the offences under Sections 120-B, 302 read with 34 and 323 I.P.C. and the fourth accused was convicted for the offences under Sections 120-B, 302 read with 34, 323 read with 34 and 364 I.P.C. and they were sentenced to undergo life imprisonment and to pay a fine of Rs.1000/- each, in default to

undergo rigorous imprisonment for one year. Challenging the said conviction and sentence, the above appeal has been filed by all the accused.

2.The case of the prosecution in brief is as follows:

"(a) The deceased Chokku @ Muniyandi had given a loan of Rs.1000/- to the first accused. When the deceased demanded for repayment of the said loan amount, the first accused refused to make the payment. Therefore, quarrel ensued between them and in that process, the deceased beat the first accused. On being beaten, the first accused warned the deceased that he would take revenge. In order to accomplish the task of revenge on the deceased, the first accused hatched a conspiracy with the accused 2 and 3, his brothers, and fourth accused, his friend, to put an end to the life of the deceased. In pursuance of the conspiracy, accused 1 to 3 asked the fourth accused to go and bring the deceased to the forest area on the pretext of hunting Monitor Lizard (cLk;g[).

(b) Accordingly on 31.03.1997 at about 8.00 A.M. the fourth accused Seeni asked the deceased to come along with him for hunting in the reserve forest. At that time, P.W.1-Thangam, the cousin of the deceased, was also present. At the request of the deceased, P.W.1 also accompanied the deceased and the fourth accused to the reserve forest for hunting. They took their dogs also with them. When they were nearing the river-bed they wanted to take their food carried with them in Tiffin carriers (Thookku Satties). Therefore, they took rest on a rock in the forest area and had taken food. After finishing their food (breakfast), they were talking with each other.

(c) At that point of time, the accused 1 to 3 suddenly appeared in the scene. The first accused abused the deceased and cut with an aruval on the front and right side of the neck of the deceased. The second accused cut the deceased with aruval on the left side of his neck. The third accused cut the deceased with aruval on the centre of his head. On receipt of the injuries, the deceased fell down on the spot.

(d) On seeing the occurrence, P.W.1, who was standing behind the accused, was crying. At that juncture, the fourth accused directed the other accused to attack P.W.1-Thangam. When the accused came near and threw stones on P.W.1, he began to run from the scene of occurrence. However, P.W.1 managed and escaped from the scene of occurrence and came to the field, where P.W.2-Pethammal, sister of the deceased and other persons were working. He informed about the incident to them. Thereafter, all of them went to the scene of occurrence and found the deceased lying dead. Thereafter, the body of the deceased was brought in a cradle by P.W.2 to the village and kept in the field at about 10.30 A.M.

(e) P.W.1 went to Sivagiri Police Station and gave a complaint Ex.P.1. P.W.11, Head Constable, who was present in the Station, received the complaint and registered a case against the accused under Sections 302 and 336B I.P.C. First Information Report is Ex.P.17.

(f) P.W.15 Inspector of Police, on receipt of a copy of the F.I.R. rushed to the scene of occurrence and reached the spot at about 4.00 P.M. on 31-07-1997. He prepared observation mahazar Ex.P2 and rough sketch Ex.P.21.He recovered M.O.2 blood stained earth, M.O.6 sample earth, M.O.5 match box, M.O.3 Citizen watch, M.O.4 bundle with three beedies and M.O.13 garlic pickle cover under Ex.P.3 mahazar in the presence of the attesting witnesses. At about 4.45 P.M., he came to the field where the body of the deceased was kept and prepared another observation mahazar Ex.P.4. He also prepared a sketch

Ex.P.22. He conducted inquest on the dead body from 5.00 P.M. to 8.00 P.M. and examined P.W.2 and others. Ex.P.23 is the inquest report. The dead body was then sent for postmortem.
(g) In the meantime, P.W.1, who sustained contusion due to the attack of the accused by pelting stones on him at the scene of occurrence, was sent to the hospital through the police memo and was examined by P.W.14 Doctor at about 4.00 A.M. on 1.4.1997. P.W.14 Doctor issued wound certificate Ex.P.20 for the injuries sustained by P.W.1.
(h) P.W.10 Doctor conducted postmortem on the body of the deceased on 1.4.1997 at about 11.00 A.M and found seven cut injuries and three abrasions on the body of the deceased and issued Ex.P.16 Postmortem certificate. The doctor opined that the deceased would appear to have died of haemorrhage and shock due to multiple injuries.
(i) P.W.15 arranged to send the Material Objects for chemical examination through the Court.
(j) On 2.4.1997, he arrested the fourth accused. He came to know that the first accused surrendered before the Court on 7.4.1997 and he obtained police custody for the first accused and recorded his confession. In pursuance of the confession statement given by the first accused, M.O.1 series, three aruvals, were recovered under Ex.P.8 mahazar. P.W.15 came to know that the second accused surrendered on 11.4.199 7 and the third accused surrendered on 16.04.1997. On 17.04.1997, he arranged for identification parade to enable P.W.1 and P.W.3 to identify the third accused as his name was mentioned in the complaint. P.W.7 Judicial Magistrate conducted the identification parade and issued Identification Parade Report Ex.P.9.
(k) P.W.15 after examining the other witnesses completed the investigation and filed the charge sheet against all the accused."
3. During the course of trial, P.W.1 to P.W.15 were examined. Exs.P.1 P.23 were filed and M.Os.1 to 13 were marked.
4. When the accused were questioned under Section 313 Cr.P.C., they simply denied their participation in the crime in question.
5. On appreciation of the materials available on record, the trial Court came to the conclusion that the accused are liable to be convicted for the offences with which they were charged and sentenced them thereunder. Hence, this appeal has been filed by the appellants/ accused.
6. Mr.R.S.Ramanathan and Mr.A.Vivek learned counsel appearing for the appellants/accused would take us through the entire evidence and point out various infirmities in the findings of the trial Court and contend that the evidence of the sole eye witness--P.W.1 cannot be relied upon and as such the accused are liable to be acquitted.
7. On the other hand, the learned Additional Public Prosecutor in justification of the reasons given in the judgment impugned, would submit that the evidence of P.W.1 which is corroborated by other materials, including the medical evidence, can be held to be trustworthy and as such, the findings of the trial Court are liable to be confirmed.
8. We have gone through the entire records and also given a careful consideration to the rival contentions.
9. The prosecution mainly relies upon the evidence of P.W.1, who speaks about the occurrence, and P.W.3, who saw the accused going towards the place of occurrence prior to the occurrence and then coming out of the scene with the weapons.

10. In regard to the evidence of P.W.3, it has to be pointed out that P.W.3 identified the third accused in the identification parade conducted by P.W.7-Judicial Magistrate. However, it has to be noted that P.W.3 during the course of cross-examination implicated the first accused alone and stating that when the accused came out of the scene of occurrence, he was able to identify the first accused alone. We are not able to place reliance on the evidence of P.W.3 for the reason that he did not specify the place at which the accused were seen at or about the scene of occurrence, besides the fact that he was implicating only the first accused and as such, the evidence of P.W.3 would not help the prosecution case.

11. The remaining material evidence available is only the evidence of P.W.1-Thangam. On going through the entire records, we are unable to place reliance on the evidence of P.W.1, the sole eye witness. The reasons for the above conclusion could be summarised as follows:

(i) According to P.W.1, on the day of occurrence at about 8.00 A.M., he was talking with the deceased in front of the house of the deceased. At that point of time, the fourth accused-Seeni came and asked the deceased to come along with him to go ahead to the forest area for haunting. As requested by the deceased, P.W.1 also accompanied with them for hunting. But, the evidence of P.W.2, the sister of the deceased is that when the fourth accused came to the house of the deceased and asked him to come for hunting, his mother objected to for the same, but after they left for field, both the deceased and the fourth accused went for hunting. Thus, as seen from the evidence of P.W.2, when the fourth accused came and took the deceased to the forest area, P.W.1 was not present. Similarly the evidence of P.W.2 that the mother of the deceased objected to for his going along with the fourth accused to the forest area, has not been spoken to by P.W.1.

(ii) It is the evidence of P.W.1 that when they went to the forest area, both of them were carrying a tiffin carriers (Thooku Satties) containing food. It is admitted by P.W.1 in the cross-examination that when the occurrence had taken place, the eversilver tiffin carriers were found in the scene of occurrence and when he ran away from the scene of occurrence, he left the tiffin carriers. From Ex.P.2 observation mahazar and Ex.P.21 rough sketch, it is seen that the said silver tiffin carriers were not found in the scene of occurrence. Further, P.W.1 would state that when they were conversing with each other after finishing their morning food, the accused came and surrounded them and attacked the deceased. According to P.W.1, the entire area was encircled with bush. But, this evidence has been falsified, since there was no bush in the scene of occurrence as per Ex.P.2 observation mahazar and Ex.P.21 the rough sketch.

(iii) P.W.10, the Doctor, who conducted postmortem on the body of the deceased, issued the postmortem certificate Ex.P.16. During postmortem, the Doctor found partial digested food in the stomach of the deceased. From this it is clear that the deceased might have taken the food 1 « hours prior to the occurrence. On the other hand, it is the evidence of P.W.1 that the attack was made immediately after finishing their food.

(iv) P.W.1 would state that he ran away from the scene of occurrence for about one kilo metre and informed the incident to P.W.2, the sister and the mother of the deceased and other villagers. On hearing the incident, all the people came to the scene of occurrence and P.W.2 with the help of others took the body in a cradle and brought the same to the village. According to

P.W.2, she then went and took bath and washed her blood stained clothes and thereafter went to the house of the Village President-Paramasiva Devar and informed about the incident. It is highly improbable that P.W.1 informed P.W.2 about the incident and that P.W.2 came to the scene of occurrence and found the deceased dead. If really P.W.2 went and saw the dead body of the deceased on the day of occurrence, she would have made arrangements to intimate the incident immediately to the Village President. This has not been done. On the other hand, she tried to lift the body and also asked others to lift the body of the deceased and when others were reluctant to lift the body, she herself lifted the body of the deceased and put it in the cradle and brought to the village. It is equally improbable to say that thereafter she took bath in a well and washed her blood stained clothes also and thereupon, she chose to go to the house of the Village President to intimate the occurrence. The evidence of P.W.2 on this aspect is so artificial, since the normal human conduct would be, that too, as a sister of the deceased, she would have first reported the matter to the village elders or to the police and the police authorities would have come to the place of occurrence and take further action.

(v) It is the case of the prosecution that the fourth accused was sent by the accused 1 to 3 in pursuance of a conspiracy to entice the deceased to go to the forest area, where they had planned to kill the deceased. As a matter of fact, as indicated above, P.W.1 along with the deceased took their dogs also to the scene of occurrence. If there was a conspiracy for murder, the fourth accused would not have allowed either the dogs or P.W.1 to accompany them to the forest area.

(vi) It is the evidence of P.W.2 that she went to the house of the Village President-Paramasiva Devar and informed the incident in which her brother was done to death. The Village President then phoned up to the police and on receipt of the message, the police came and by that time P.W.1 and his brother-in-law--Thavidan came to the scene. If it is so, there was no necessity for P.W.1 to go to the Police Station, which is situated at a distance of eight kilo metres from the scene village. According to P.W.1, he left the village in a bicycle driven by his brother-in-law and reached the Police Station at about 2.4 5 P.M. and gave the complaint Ex.P.1 to P.W.11-Head Constable, who registered the case. As per the evidence of P.W.12-Constable, he received the copy of the First Information Report at 4.15 P.M. and delivered to the Magistrate at 6.00 P.M. on the date of occurrence. On the other hand P.W.15-Inspector of Police would state that he received the First Information Report from P.W.12 at about 6.30 P.M. Strangely, the Inspector of Police P.W.15 came to the scene of occurrence at 2.00 P.M. itself. P.W.4 who is the attesting witness of the Observation Mahazar Ex.P.2, would clearly state that P.W.15 Inspector of Police came to the scene of occurrence at about 2.00 P.M. and at 4.00 P.M. he prepared the observation mahazar and sketch. According to P.W.15, only after receipt of the First Information Report on the complaint given by P.W.1, he came to the spot at 4.00 P.M. When P.W.1 was available in the Police Station at the relevant time, there is no reason as to why P.W.15 Inspector of Police approached P.W.4 to identify the place of occurrence. Admittedly, P.W.4 had not seen the occurrence earlier.

(vii) It is the evidence of P.W.1 that from the Police Station he was taken to the hospital where he was given treatment by P.W.14Doctor. As per

the evidence of P.W.14, P.W.1 approached the Doctor at 4.2 0 A.M. on 1.4.1997 and he was given treatment as outpatient and wound certificate Ex.P.20 was issued. According to P.W.14, P.W.1 sustained some contusion on his body. It is not the case of P.W.1 that he came back to the scene of occurrence subsequently after registration of the case. P.W.1 would specifically state that after giving the complaint, he was taken to the hospital, where he was given treatment as outpatient.

(viii) It is the evidence of P.W.15 that he went to the forest at 4.00 P.M. and asked P.W.4 to show the place of occurrence and after reaching the spot, he prepared observation mahazar Ex.P.2 and rough sketch Ex.P.21 and thereafter, they came to field where the dead body was kept and prepared another observation mahazar Ex.P.4 and rough sketch Ex.P.22. P.W.4 is the attesting witness for both Ex.P.2 and Ex.P.4 magazars. P.W.15 then conducted inquest from 5.00 P.M. to 8.0 0 P.M. and thereafter he examined P.W.1, P.W.2 and other witnesses. This cannot be true because, P.W.1 never said that he came back to the village and was examined during inquest by P.W.15. But, it is the case of P.W.1 that he was taken to the hospital where he was given treatment at 4.20 A.M. on 1.4.1997 i.e., on the next day of occurrence. This would indicate that the Inspector of Police-P.W.15 must have come to the spot at 2.00 P.M. on the date of occurrence itself, as indicated in the evidence of P.W.4, on the basis of some other information. It is the clear statement of P.W.12 that he received the First Information Report at 4.15 P.M. only. The Inspector of Police, P.W.15 would have come to the spot at 2.00 P.M. on the basis of information given by P.W.2 to the Police Station over phone by the Village President or on the basis of some other information. It is the clear admission of P.W.2 that only after the President called the Police, the police came to the spot and examined the witnesses and then, took the wife of the deceased to the police station.

(ix) The occurrence had taken place around 10.00 A.M. on 31.07.1997. According to P.W.1, he reached the police station at 2.45 P.M. The distance between the scene village and the police station is only eight kilo metres and he went in a bicycle driven by his brother-inlaw Thavedan. If he had gone immediately in a bicycle from the village after the occurrence, there would have been no delay in reaching the police station, but P.W.1 had reached the Police station at 2.45 P.M.

(x) The motive in this case is that the deceased had given a loan of Rs.1000/- to the first accused and when the first accused was demanded for repayment of the same, he refused to pay and therefore, the deceased beat him. Though this fact was mentioned in Ex.P.1, P.W.1 in his evidence would state that the first accused only had given the amount to the deceased and when the same was demanded, there was a quarrel and in that process, the deceased beat the first accused. The said motive, in our view, appears to be so flimsy.

(xi) When the accused 1 to 3 in pursuance of a conspiracy came to the scene of occurrence to attack the deceased with the help of the fourth accused, who took the deceased to the scene place, they would not have spared P.W.1 to escape from the scene so as to enable him to go and report the matter to the authorities.

(xii) When all these suspicious circumstances are put together, the same would indicate that P.W.1 would not have been present at the scene of occurrence at the relevant time and as such, his evidence cannot be relied upon. Consequently, it is to be held that the accused are entitled to be

acquitted, giving benefit of doubt.
12. In the result, the appeal is allowed. The conviction and sentence imposed upon all the appellants/accused by the trial Court are set aside and they are acquitted of all the charges and the fine amount, if paid, shall be refunded to them. The appellants/accused are directed to be released forthwith, unless they are required in connection with any other case.

Index-Yes.
Internet-Yes.

Sk/-

To

1.The I Additional Sessions Judge,
Tirunelveli.

2.The I Additional Sessions Judge,
Tirunelveli,
through the Principal Sessions Judge,
Tirunelveli.

3.The Superintendent,
Central Prison,
Palayamkottai.

4.The Public Prosecutor,
High Court, Madras.

5.The Inspector of Police,
Sivagiri,
Tirunelveli District.

6.The District Collector,
Tirunelveli District,
Tirunelveli.

7.The Director General of Police,
Chennai.

8.The Public Prosecutor,
High Court,
Madras.